

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 98-66

August 13, 1998

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Charges under Beck Alleging as Unlawful a Local Union's Use of the
"Local Presumption"

Under CWA v. Beck, 487 U.S. 735 (1988), a nonmember employee working under a union security obligation may protest the union's exaction from him of dues money that is not to be used for contract administration, collective bargaining or other representational purposes. Under Beck, the union cannot lawfully charge these nonmember objectors for nonrepresentational expenses. Further, within a reasonable time after the nonmember makes his objection, the union is obligated to furnish the objector information as to its calculation of dues, including the major categories of its expenditures, the dollar amounts of these expenditures and what portion of each category it considers representational and what portion it considers nonrepresentational. Under Beck, as explained by the Board in California Saw, 320 NLRB 224, 233, enf'd 133 F.3d 1012 (7th Cir. 1998), this information must be sufficient to enable the objector to determine whether to protest the union's calculations of the amount that it charges the objector as representational costs.

Some local unions serving as Section 9(a) representatives respond to objections by announcing that they are basing the amount of dues they charge nonmember objectors on their international union's accounting of the international's expenditures. The local unions assert that the proportion of their total expenditures spent on representational activities is no less than the proportion of the international's total expenditures dedicated to such activities. For that reason, the locals use the international's proportion (percentage), rather than calculating and using their own proportion or percentage, in determining the amount of dues to be charged an objector. The local unions do not provide information to support this statement but, in effect, ask objectors to accept their assertion that their properly chargeable expenditures are no less than the international's. Further, the locals do not provide objectors a Beck breakdown of

the locals' expenditures indicating what proportion of their expenditures they consider chargeable and nonchargeable, but instead only provide this information as to the international's expenditures. This is the "local presumption."

The question of whether a union can use this "local presumption" without first establishing that there is a basis for that presumption is now pending before the Board in International Union, UAW (Electric Boat Division, General Dynamics Corp.), Case 31-CB-7841. Until a decision issues in this case, Regions should proceed as follows: If the local presumption issue is the only meritorious allegation in a charge, the Region should hold the charge in abeyance pending a decision by the Board on the local presumption issue. If there are other allegations in the charge that the Region finds meritorious and that do not settle, the Region should seek from the Union a Jefferson Chemical Company¹ waiver as to the local presumption allegation. A model waiver is attached. If such a waiver is obtained, the Region should hold the local presumption allegation in abeyance and proceed with the other unsettled allegations. If the Jefferson Chemical waiver is not obtained, the Region should contact Deputy Assistant General Counsel Jane C. Schnabel. Also, please notify DAGC Schnabel of any local presumption allegations that you hold in abeyance under these instructions.

If you have any questions concerning this memorandum, please contact DAGC Schnabel or the undersigned.

R. A. S.

Attachment

cc: NLRBU

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¹ 200 NLRB 992 (1972).

STIPULATION AND WAIVER

It having been concluded by the Acting General Counsel to issue complaint in (Case Name & Number) alleging inter alia, that (Local Union), herein called Respondent, has violated the Act by failing to give objecting nonmembers a breakdown of its expenses for (year) and has instead relied on a “local presumption” that the nonchargeable percentage of the Local Union’s dues is no greater than that of the International Union, the Respondent hereby stipulates and agrees that:

1. The Acting General Counsel can issue complaint and proceed to hearing and decision by both an Administrative Law Judge and the Board in the instant matter without alleging that the Respondent violated the Act by failing to give objecting nonmembers a breakdown of expenses for representational activities for (year) and instead relying on a “local presumption” that the nonchargeable percentage of the Local Union’s dues is no greater than that of the International Union for that year.
2. Not litigating the above described “local presumption” issue along with the other allegations in the instant matter is not a waste of resources or an abuse of process; but rather is a conservation of resources of both the NLRB and the Respondent and best effectuates and serves the purposes and policies of the Act to proceed in this manner.
3. The Respondent is in no way prejudiced, unduly burdened, or harassed by this procedure.
4. The Acting General Counsel is not estopped from subsequently issuing complaint in this matter covering the above described “local presumption” allegation even though that allegation was not encompassed in the complaint which issued in this matter on (date).

In stipulating and agreeing to the above, the Respondent expressly waives any objection to the above procedure and any defenses that the Respondent would have under Peyton Packing Company, Inc., 129 NLRB 1358, Jefferson Chemical Company, Inc., 200 NLRB 992 and related cases.